

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,
Plaintiff,

v.

GLEN COBB, CHARLES COBB, ANNA
COBB, and MONICA NAMNARD,
Defendants.

Case No. 2:14-CR-00194-APG-NJK

ORDER

(Dkt. #101, #116, #118)

Defendants Glen Cobb, Charles Cobb, Anna Cobb, and Monica Namnard were indicted on June 3, 2014. (Dkt. #1.) Glen Cobb is charged in count one with conducting an illegal gambling business. (*Id.*) All Defendants are charged in count two with conspiracy to structure transactions to evade reporting requirements. (*Id.*) The indictment also contains four forfeiture counts. (*Id.*)

Defendants move for production of the transcripts of the grand jury proceedings to determine whether the Government engaged in outrageous conduct warranting dismissal. Defendants contend the Government conceded that it overseized funds from Defendants' trust account, but four days later may have represented to the grand jury that all the funds in the subject account were proceeds of Defendants' alleged illegal activity. Alternatively, Defendants request the grand jury minutes and transcripts be made available at the time of trial to determine Defendants' right of inspection and use under 18 U.S.C. § 3500. Additionally, Defendants request pre-trial production of grand jury transcripts for all witnesses who will testify at trial under the Jencks Act and *Brady v. Maryland*, 373 U.S. 83 (1963).

In response, the Government admits it represented in a related civil proceeding that some of the funds in the trust account that the Government seized were not proceeds of illegal activity. However, the Government contends it amended that statement in a later filing. The Government's position now is that the entire trust account constitutes proceeds of illegal activity.

1 The Government asserts that invading the grand jury's secrecy is appropriate only if the alleged
2 misconduct would result in dismissal of the indictment. But, according to the Government,
3 Defendants' argument relates only to the forfeiture counts, not to the substantive criminal
4 charges. The Government concedes it must turn over grand jury transcripts for all witnesses who
5 testify at trial under the Jencks Act, but the Government does not anticipate the grand jury
6 witnesses will testify at trial.

7 Magistrate Judge Nancy Koppe denied Defendants' motion, finding Defendants had not
8 shown a particularized and compelling need for the transcripts that outweighed the general policy
9 of grand jury secrecy. (Dkt. #116.) Magistrate Judge Koppe found that Defendants' argument
10 regarding the Government's concession was not supported by the evidence, which showed that
11 the Government subsequently determined all the funds in the trust account were subject to
12 forfeiture. (*Id.* at 4.) Magistrate Judge Koppe also found Defendants' motion rested on
13 speculation and, in any event, was directed at forfeiture rather than a substantive count of the
14 indictment. (*Id.* at 4 & n.8.) Finally, Magistrate Judge Koppe concluded Defendants' Jencks Act
15 request was premature, because no witnesses had yet testified at trial and the Government has
16 committed to complying with its Jencks Act and *Brady* obligations. (*Id.* at 5 & n.10.)

17 Defendants object to Magistrate Judge Koppe's ruling, arguing they need show only the
18 possibility of misconduct warranting dismissal but the Magistrate Judge erroneously held them to
19 a higher standard. Defendants also argue the Magistrate Judge Koppe incorrectly concluded the
20 alleged misconduct related only to forfeiture, because the money that is the subject of the
21 forfeiture counts is the same money underlying the substantive counts. Defendants also contend
22 their allegations are not speculative. According to Defendants, the reason they could not provide
23 evidence at the time they filed the motion was because the related civil proceedings were under
24 seal. Finally, Defendants argue Magistrate Judge Koppe failed to consider Defendants' argument
25 that they are entitled to the grand jury transcripts under *Brady*.

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1 **I. Discussion**

2 I review Magistrate Judge Koppe's order to determine whether it is clearly erroneous or
3 contrary to law. 28 U.S.C. § 636(b)(1)(A).

4 Grand jury proceedings generally are secret. *United States v. Murray*, 751 F.2d 1528,
5 1533 (9th Cir. 1985). However, a court may authorize disclosure of grand jury proceedings if the
6 defendant "shows that a ground may exist to dismiss the indictment because of a matter that
7 occurred before the grand jury." Fed. R. Crim. P. 6(e)(3)(E)(ii). To satisfy this burden, the
8 defendant must "demonstrate[] that a particularized need exists that outweighs the policy of grand
9 jury secrecy." *Murray*, 751 F.2d at 1533. "Mere unsubstantiated, speculative assertions of
10 improprieties in the proceedings do not supply the particular need required to outweigh the policy
11 of grand jury secrecy." *United States v. Ferreboeuf*, 632 F.2d 832, 835 (9th Cir. 1980) (internal
12 quotation marks and citation omitted). Whether to release grand jury materials lies within the
13 court's discretion. *Murray*, 751 F.2d at 1533.

14 Defendants' argument is based on a filing in a related civil proceeding, case number 2:14-
15 CV-00781-APG-VCF. In that action, the Government stated in a May 28, 2014 filing that "the
16 United States determined that \$2,498,851 of the \$7,704,426.86, which includes appreciation, is
17 not illegal proceeds. As a result, the Government has informed movants' counsel that it will seek
18 to return \$2,498,851 pursuant to an agreement." (2:14-CV-00781-APG-VCF, Dkt. #8 at 11 n.6.)
19 The grand jury issued the indictment in this case a few days later, on June 3, 2014, and the
20 indictment includes over \$7 million in the forfeiture allegations. (Dkt. #1 at 4-8.) On June 23,
21 2014, the Government filed a Notice of Docket Correction in the related civil proceeding stating
22 that subsequent to filing the May 28 document, "the Government determined that those funds do
23 constitute illegal proceeds," and that the grand jury improperly included the funds in the forfeiture
24 allegations in the present case. (2:14-CV-00781-APG-VCF, Dkt. #32.)

25 Magistrate Judge Koppe's conclusion that the evidence does not support Defendants'
26 motion is not clearly erroneous or contrary to law. Although the Government initially stated that
27 it had overseized funds from the trust account, it subsequently took the position that all the seized
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1 funds were illegal proceeds. Defendants present no evidence that the Government engaged in
2 misconduct before the grand jury as opposed to a reevaluation of its position. In the related
3 proceeding, Defendants recognized that “the Government certainly has a right to reverse its
4 position” on this point. (2:14-CV-00781-APG-VCF, Dkt. #38 at 3.)

5 Additionally, Magistrate Judge Koppe’s conclusion that Defendants’ argument is directed
6 at forfeiture rather than the substantive criminal charges is not clearly erroneous or contrary to
7 law. The substantive counts do not specifically refer to the \$7 million, and the conspiracy count
8 lists transactions in amounts substantially less than \$7 million to support the overt acts. (Dkt. #1.)
9 Defendants present no evidence or argument that the monetary difference in the seized funds
10 would have had any impact on the grand jury’s decision to indict on the substantive counts.
11 Defendants have not met their burden of showing a particularized need that outweighs the general
12 policy of grand jury secrecy or that disclosure of the grand jury proceedings would result in
13 dismissal of the indictment. I therefore overrule this objection.

14 As for Defendants’ Jencks Act argument, Defendants present no authority for their request
15 for pre-trial production of Jencks Act material. *See* 18 U.S.C. § 3500(a) (providing that
16 statements of prospective Government witnesses are not subject to “subp[o]ena, discovery, or
17 inspection until said witness has testified on direct examination in the trial of the case”); *see also*
18 *id.* § 3500(c) (providing for the court to conduct *in camera* inspection of grand jury materials the
19 Government has been ordered to produce). The Government has indicated it will comply with its
20 obligations under the Government’s Disclosure Statement, which provides the Government will
21 disclose Jencks Act material five days before trial. (Dkt. #61 at 3.) Magistrate Judge Koppe’s
22 conclusion that Defendants’ request is premature is neither clearly erroneous nor contrary to law.
23 I overrule this objection.

24 Finally, Defendants’ contention that the Magistrate Judge did not address their *Brady*
25 argument is incorrect. Magistrate Judge Koppe noted that in addition to the legal requirement to
26 produce exculpatory evidence, the Government has represented it will fulfill its obligations in the
27 Disclosure Statement. (Dkt. #116 at 10 n.5; *see also* Dkt. #61 at 2.) Defendants have not
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1 presented any argument or evidence as to why the portion of the order on this point is clearly
2 erroneous or contrary to law. I therefore overrule this objection.

3 **II. Conclusion**

4 IT IS THEREFORE ORDERED that Defendants' Motion for Transcription of Grand Jury
5 Minutes (Dkt. #101) is DENIED.

6 IT IS FURTHER ORDERED that Defendants' Objections (Dkt. #118) are OVERRULED
7 and the Magistrate Judge's Order (Dkt. #116) is AFFIRMED.

8 DATED this 9th day of February, 2014.

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12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
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